

There is another view of this subject which has a strong tendency, in my judgment, to justify Green, the trustee, in paying these fees to the counsel. He was, by the terms of the deed of August, 1839, creating the trust, entitled to an allowance for costs and expenses attending its execution, inclusive of a reasonable commission to himself; and such allowances, should the nature of the trust and the circumstances of the case require it, will embrace, even without an express provision, the expense of employing an attorney. *Willis on Trustees*, 146, 147; 10 *Law Lib.*, 69; *Hagthorp vs. Hook*, 1 *Gill & Johns.*, 273; 2 *Mod. Ch. Prac.*, 158.

In this case, it is manifest, that notwithstanding the assignments of the creditors to Putney and Riddle and Gorman, that the agency and active exertions of the trustee were indispensable to the recovery of the money from the United States, he being considered by the government, the party alone authorized to receive it.

Now assuming, for the sake of the argument, that Putney, was entitled to one-fourth of this fund, (and that is certainly the extent of his claim,) was not Green, as his trustee, authorized to unite with Riddle and Gorman, the owners of the other three-fourths, in the contract which they made with the council upon the subject of fees? Was not this agreement on the part of the owners of three-fourths of the claims, the strongest possible evidence of the reasonableness of the compensation.

The court is without the necessary data to found a very satisfactory opinion upon the subject; but, seeing that parties interested to the extent of three-fourths made this contract, and forming the best judgment I can, from the lights before me of the difficulties which had to be surmounted, before the claim could be allowed, I am not disposed to visit upon the trustee loss on account of it.

I am of opinion, therefore, that Green is entitled to be allowed for this payment to the counsel, not only as against Gorman and Riddle, but, as against Putney, also.

The next question relates to the trustee's claim, to be allowed for the sums of \$600, and \$200, provided for in the paper